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JMENT

UTAH SUPREME COURT

BRIEF

KEY NO.

92544

IN THE SUPREME COURT

of the

STATE OF UTAH

IN THE MATTER OF THE DIS-
CONNECTION OF PART OF THE
TERRITORY OF WEST JORDAN,
INC.

} No. 9254

APPELLANT'S REPLY BRIEF

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INDEX OF AUTHORITIES

STATUTES

Utah Code Annotated, 1953:

	<i>Page</i>
Section 10-3-1	13
Section 10-4-1	2
Section 10-4-2	2

CASES

Anaconda Mining Company v. Town of Anaconda, 33 Colo. 70, 80 P. 144	7
Application of Peterson, 92 Utah 212, 66 P. (2d) 1195.....	6
Greenwood Village v. Heckendorf, 126 Colo. 180, 247 P. (2) 678	8
Howard v. Town of North Salt Lake, 7 U. (2) 278, 323 P. (2) 261	8
Lincoln Addition Improvement Company v. Lenhart, 50 N.D. 25, 195 N.W. 14	9
Mogaard v. City of Garrison, 47 N.D. 468, 182 N.W. 758.....	9
Swanson v. City of Fairfield, 155 Neb. 682, 53 N.W. (2) 90....	9
Town of Gypsum v. Lundgren, 61 Colo. 332, 157 P. 195.....	10
Village of Niobrara, 158 Neb. 517, 63 N.W. (2) 867.....	13

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APPELLANT'S REPLY BRIEF

In reply to Respondent's Brief filed on appeal, we wish to redirect the Court's attention to the question before the Court, namely, whether the area seeking disconnection comes within the provisions of Sections 10-4-1, 2, Utah Code Annotated, 1953, as being land "within and lying upon the borders" of the incorporated town.

We particularly point this out because much of the substance of respondent's brief (particularly pages 7-9) resorts to what respondent terms "*inferences*" to be assumed from the findings, conclusions of law and judgment in it favor. These so-called inferences are not

justified and seem to be calculated to avoid the jurisdictional question before this Court.

It might be helpful to here set forth the pertinent portions of *Sections 10-4-1 and 10-4-2*:

"10-4-1. * * * Whenever a majority of the real property owners in territory within and lying upon the borders of any incorporated city or town shall file with the clerk of the district court of the county in which such territory lies a petition praying that such territory be disconnected therefrom, and such petition sets forth reasons why such territory should be disconnected from such city or town, and is accompanied with a map or plat of the territory sought to be disconnected * * * Issue shall be joined and the case tried as provided for the trial of civil causes as nearly as may be.

"10-4-2. * * * If the court finds that the petition was signed by a majority of the real property owners of the territory concerned and that the allegations of the petition are true and that justice and equity require that such territory or any part thereof should be disconnected from such city or town, it shall appoint three disinterested persons as commissioners to adjust the term upon which such part shall be so severed as to any liabilities of such city or town that have accrued during the connection of such part with the corporation, and as to the mutual property rights of the city or town and the territory to be detached."

By Petition & Sub.

In the trial court, the case was fully tried on its merits, and after consideration of all the evidence, the

trial court found all of the issues in favor of petitioners, appellants herein, and on the grounds alleged in the petition entered its findings of fact and conclusions of law under date of January 5, 1960 (R. 9-11). Pending the appointment of commissioners to adjust mutual property rights, respondent (the town) filed its motion (R. 12) on January 12, 1960, to set aside the findings and conclusions or in the alternative grant a new trial.

The Court did not grant a new trial, *nor vacate or set aside* the findings of fact entered January 5, 1960, (R. 9-11), but made additional findings (R. 14-17) bearing solely on the question of whether the area seeking disconnection was "within and lying upon the borders of the town." This was the sole question concerning which further argument and briefs were requested and passed upon. Bearing upon this question, the Court on March 17, 1960, made a further finding (R. 14) as to the approximate shape of the area seeking disconnection, and that such area did not "come within the requirements of Section 10-4-1, U.C.A. 1953" of being within and upon the borders of the town. The sole conclusion of law then made by the Court was as follows:

"1. The area seeking disconnection does not come within the statute of being 'within and lying upon the borders' of the town of West Jordan and therefore, notwithstanding prior findings of the Court, the petition for disconnection must be denied." (R. 15)

It seems abundantly clear from reading the preface to the Findings of Fact prepared by respondent's coun-

sel wherein it states that "Notwithstanding the prior findings of his Court," (R. 14) that Judge Anderson did not intend thereby to vacate or set aside his prior Findings of Fact and in effect modified or amended such findings only in the one respect, namely, that the area seeking disconnection did not meet the requirements of the statute as lying "within and upon the borders of the town."

This modification or amendment of the findings and judgment falls within the purpose of Rule 52(b), which authorizes the trial court to *amend* the findings and judgment upon timely motion made.

However, whatever doubt there may have been in regard to this question is conclusively laid to rest by reason of the Order dated March 21, 1960 (R. 17). This order was entered at the suggestion of the court at the time counsel for both sides was advised as to the ruling of the court on the jurisdictional question raised by respondent in order that this court would be adequately advised as to the basis of his decision on the merits since the reasons set forth there was not included in the Findings of Fact entered January 5, 1960. This order specifically reads:

"2. Except for the dismissal of the petition in this cause by reason of this court not having jurisdiction due to the location of the area seeking disconnection with respect to the border of the town, the following additional findings of fact would have been made and entered and this

is not done at this time because the same are not necessary in view of the action of this court:

“(1) The Utah-Idaho Sugar Company and other petitioners were not given adequate notice prior to the bond election authorizing the issuance of the sewer bonds to adequately protect their property and interest against the bonding of the town through general obligation bonds and disseminated information prior to the election with respect to the financing of said bonds which was not correct.

“(2) A representative of the Town of West Jordan prevented the erroneous information referred to above from being corrected at the only mass meeting held prior to the bond election.

“Dated this 21st day of March, 1960.

By the Court:

/s/ Aldon J. Anderson
JUDGE”

Most of the authorities cited by respondent in its brief are cases in which the lower court was upheld in affirming that the petition should not be granted because the injurious effect of such disconnection outweighed the cause for granting it, whereas the lower court here found that no substantial harm would result to the area not seeking disconnection by the granting of this petition (R. 10—Finding No. 6). Respondent would disregard this important distinction by its statement on page 2 of its brief, last paragraph, “This question is much

the same whether considered as jurisdictional, or, as a fact to be determined under all the circumstances and under all the evidence to be presented in the case." Respondent then proceeds to contend that this court should *infer* that the lower court actually found contrary to Finding of Fact No. 6 entered January 5, 1960 (R. 10) since the lower court refused to grant its Motion to Dismiss (R. 6) before trial.

In *Application of Peterson*, 92 Utah 212, 66 P. (2) 1195, the court severed a portion of the area seeking disconnection and specifically made comment of the fact that symmetry was a matter of "justice and equity" and the particular shape of the area was not the sole consideration. The court also made comment of the fact that loss of income derived from taxation of such land was an insufficient ground or reason for refusing segregation. Certainly that case does not stand for the proposition that the trial court does not have jurisdiction to consider the merits of any application for disconnection by reason of the fact that an area projects into the remainder of the town. It is, of course, important for the court to determine what effect this projection has upon the proper functioning of the area remaining in the town and this aspect of the case at bar was thoroughly investigated in this extended trial and the lower court resolved that issue against the respondent and refused to alter its position in this regard after concluding that it had been in error as to the jurisdictional aspect of this petition.

As to the *Anaconda* case, it is surprising that counsel for respondent would urge this court to follow the decision in that case despite many reasonable grounds for distinction pointed out in appellants' brief without even discussing those distinctions. If cases having *similar facts* but not *substantially the same on all facts* were urged as precedents, the courts would have an even more difficult task than they do in determining what the law is.

It is obvious that any disconnection of part of a town's territory is injurious to it, if only from the revenue aspect, which is the motivating reason for resisting practically all such applications. In many, if not most, of the petitions for disconnection, the area seeking disconnection projects to a greater or lesser extent into the town area and, to that extent, one would presume that there is some injurious effect aside from the loss of revenue. However, the actual extent of this injury cannot be determined merely by looking at the shape of the area seeking disconnection and its relationship to the remaining portions of the town because the entire city area of some cities and towns is very complex because of its residential and industrial area whereas other towns, such as West Jordan, have large portions of rural and agricultural lands included where they were originally incorporated for such purposes as having a cemetery, as was West Jordan, or for some other purpose where the boundaries have little relation to the town's functions except to the extent of the area included

for revenue purposes. The fundamental question, therefore, for this court to determine is whether or not the trial court has jurisdiction to consider an application for disconnection, and thus determine the actual extent of the claimed injury, or whether injury too severe to tolerate must conclusively be presumed to exist in accordance with the supposed intent of the legislature when most of the area seeking disconnection does not have its boundary contiguous to the boundaries of town. Town boundaries, of course, are of such widely varying shapes that both the town here and North Salt Lake had islands within them prior to the disconnection proceedings in this case and in the case of *Howard v. Town of North Salt Lake*, 7 U. (2) 278, 323 P. (2) 261. It hardly seems likely that the legislature would declare that the injury ipso facto to a town would be so much greater because the shorter side of the rectangle (or an irregular area as here) was the portion contiguous to the borders of the town than if the longer side of such an area were contiguous that the court could properly consider the actual injury suffered by the town in the latter case but not the former.

In the case of *Greenwood Village v. Heckendorf*, 126 Colo. 180, 247 P. (2) 678, cited by on page six of respondent's as following the *Anaconda* case, the question was not whether a sufficient portion of the area seeking disconnection was on the border but rather as there stated by the Court (P. 681):

“Did the trial court err in striking the seventh defense contained in the answer, which alleged that the disconnection sought would divide

the town into two areas wholly separated from each other?"

In answer the Court then said:


"This question must be answered in the affirmative. The disconnection of land from a town cannot be permitted where the result thereof would be to divide the municipality into two areas *wholly* isolated from each other." (Emphasis added)

In *Mogaard v. City of Garrison*, 47 N.D. 468, 182 N.W. 758, cited page six of respondent's brief, the basis of the decision appears to have been primarily that mandamus was not the proper remedy, and petitioners did not meet the mandatory conditions of the statute requiring a showing that no municipal sewers, water mains, etc. had been made or constructed in the area.

In *Lincoln Addition Improvement Company v. Lenhart*, 50 N.D. 25, 195 N.W. 14, also cited page six of respondent's brief, a right of way of the Northern Pacific Railway extended along the east edge of the town between the town border and the area seeking disconnection. The opinion is not clear as to how much, if any, of the railroad right of way was within the area seeking disconnection, but the court did comment that, considering the railroad right of way, the area was not contiguous for jurisdictional and transportation purposes. No similar situation exists in the instant case.

In *Swanson v. the City of Fairfield*, 155 Neb. 682, 53 N.W.(2) 90, the effect would be to "leave a boot of

X
X

urban land projecting into rural land.” (This boot consisted of a residential area three blocks wide and seven blocks long.) Certainly no city blocks or residential area will project into the farming land because of the disconnection in this case, and, conversely, no boot of farming land is projected into urban land here either. 

Regarding the authorities cited, respondent has not seen fit to comment on the case of *Town of Gypsum v. Lundgren*, 61 Colo. 332, 157 P. 195. In that case, the statute provided:

“That whenever a tract or contiguous tracts of land aggregating twenty (20) or more acres in area are embraced within the corporate limits * * *, the owner or owners * * * may petition * * * to have the same disconnected.”

Three land owners petitioned for disconnection. Only one of these three tracts (fourteen and a fraction acres) owned by Lundgren bordered on the exterior limits of the town. The other tracts did not, but were contiguous to the Lundgren tract. In granting disconnection, the court said:

“The words ‘tract or tracts’ apply to the pieces making the aggregate of 20 acres or more in the city or town. The words following ‘and being upon or contiguous to the border thereof’ apply to the 20 acres or more as a unit for consideration under the petition. The context thus indicates. This position is strengthened when we consider section 2, which provides that:

“‘Such petition shall show to the court that such tract or tracts of land contain in the aggre-

gate an area of twenty or more acres, upon or adjacent to the border of said city or town.'

"We thus find in this section a recognition of the 20 acres or more as a unit which is required to be upon or adjacent to the border of the town. To hold otherwise would be to say that this land could be disconnected if owned by one person but that it could not, if owned by three. This might be a discrimination without a reason for it."

We believe this decision is particularly pertinent as illustrating that the statute should be given a practical interpretation, that all land owners contiguous to and having a community and continuity of interest with lands lying upon the border should not be denied the right to join in a petition for severance. In the instant case, the trial court recognized and found that all of the area seeking disconnection had a community or continuity of interests and found:

"4. The portion of the town seeking disconnection * * * consists essentially of farms, dairies, and a sugar factory and is agricultural and rural in nature, whereas the remaining portion, that is the portion of said town not seeking disconnection, includes within its confines the business and residential area.

"5. Part of the sewer system is now installed and that portion was planned and designed to serve that portion of the town not seeking disconnection and does not presently serve the area seeking disconnection, and petitioners do not presently receive any benefit commensurate with the obligation to which they would

be subjected by reason of said bonded indebtedness and would not even if the sewer system were extended to include their area.

“6. The portion of the town seeking disconnection is not necessary to the incorporated area for the purpose of continuing its general town purposes and such disconnection will not result in any substantial harm to the area not seeking disconnection.

“7. That justice and equity require that the property sought to be disconnected and which is hereafter described be disconnected from the incorporated Town of West Jordan.” (R. 9-10)

If the trial court had jurisdiction to disconnect the particular lands lying approximately one-half mile on the southern border, *which most certainly it did*, then the court, having jurisdiction, we submit, had jurisdiction to disconnect the adjoining lands similarly affected. The legislative intent should in justice be given this practical application. It would not be practical, nor just, to require that each contiguous land owner should be required to file separate petitions or to say that the court had jurisdiction to disconnect the property owners whose lands bordered the Southern boundary of the town and then leave each adjacent property owner then lying on the borders to separately petition to accomplish the same end result. Under its powers of “equity and justice” which favored disconnection of the entire unit, the court having jurisdiction should not be so restricted when such result would be to deny “equity and justice.”

Usually the same requirements for annexation or extension of corporate limits are required as are required for disconnection. In Utah this is permitted under *Section 10-3-1, Utah Code Annotated 1953*, by two-thirds vote of the town board, *without a court hearing*, as to lands lying "contiguous" to the town limits. Certainly the Town of West Jordan, or other municipalities, have never accepted the interpretation of Section 10-3-1 as limiting them to just the immediate property owners adjacent to the town. If so, they would have to proceed by successive proceedings to annex each adjacent property owner to validate such annexation. "Contiguous territory is treated similarly to lying on the borders or boundary in *Village of Niobrara*, 158 Neb. 517, 63 N.W. (2) 867. The power of the village to annex territory was limited to annexing "contiguous territory." In that case the court denied annexation because the record failed to show that any part of the territory sought to be annexed to the village was contiguous to it, or that "*any part* of the boundary of the area is coexistent with a part of the boundary of the village."

In the instant case, the area seeking disconnection is surrounded by the remaining portion of the Town of West Jordan on the east, north and west, as illustrated by the map following page two of respondent's brief. Particularly when the trial court found that justice and equity on all issues favored disconnection, it cannot be said that such disconnection would *gut* or *divide*

the town as contended by respondents. The findings of the Court are to the contrary.

Counsel for respondent concede that the lower court would have had jurisdiction to have entered the decree of severance if the legislature had used the word "standing" instead of the word "lying." It is respectfully submitted, however, that land does not stand or lie but is situated with reference to and that both connotations import that the land standing or lying touches the reference referred to in the statute.

As a matter of statutory construction that construction is to be preferred which permits the cause to be determined on its merits and which avoids a multiplicity of suits. The application of either of these two principles to the statute in question would resolve this case in appellants' favor. Otherwise the appellant petitioners whose property is closest to the southern boundary of West Jordan may petition for disconnection despite this prior dismissal, which was not on the merits. If granted the relief Judge Anderson determined they were entitled to on the merits, then those adjacent to the new southern boundary may do likewise with the effect pointed out in appellant's first brief (and which was not discussed in respondent's brief). One of the justifiable criticisms of the law and legal procedures is that the results many times are not reasonably related to what is right or fair. Such a result is to be avoided unless the statute in question cannot reasonably be con-

strued otherwise. It is respectfully submitted that this statute cannot only be reasonably construed otherwise but that it is more reasonable to construe in such other fashion.

In the instant case, if the petitioners are not allowed to disconnect themselves from the Town of West Jordan the effect will be to require them to pay a large portion of the taxes and bonded indebtedness without any or equal benefits. Such result is not to serve equity and justice, but to defeat the same, and of necessity to force farmers and industry out of the community.

We respectfully submit that the trial court was in error in finding it lacked jurisdiction, and that the judgment should be reversed and the trial court directed to grant a decree of severance.

Respectfully submitted,

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regarding of any boundaries 60 ALN 1020
1033 1st 1/2 ad case

q⁹ Booths county & Town land

Justice & Equity? (What & Nebraska)

To my clients - no more sewer, ^{sanitary conditions} must go through
narrow neck of land for business district

^{q²} area concerned - what does that mean. If
wee like foot more than seven area, but area on
both sides

Sewers - Legislative matter
should be decided when people speak
can't stop bond election - so withdraw